

N. H. S.
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25 June 1973

**OGC REVIEW
COMPLETED**

MEMORANDUM FOR: Deputy Director for Management and Services
Deputy Director for Science and Technology

SUBJECT : Perkin-Elmer Investigation

1. The purpose of this memorandum is to report the status of the investigation of mischarging at Perkin-Elmer Corporation (P-E) and the options available with respect to either criminal prosecution or civil fraud penalties. Based on the DCAA Audit Report of 4 April 1973, which indicated a pattern of fraudulent charges to the Government contracts, it was determined that appropriate investigation should be conducted. Normally, this would be conducted under the auspices of the Department of Justice. In view of all the circumstances, the matter was discussed with the Fraud Section, Criminal Division, Department of Justice, which agreed that it would be appropriate if the Air Force Office of Special Investigations conducted the investigation.

2. Brig. General William A. Temple, Commander of the Air Force Office of Special Investigations, was contacted and agreed to undertake the investigation. He assigned a team, and after appropriate discussions at the Agency the team went to the P-E premises in Connecticut and completed its investigation on 8 June 1973. Its formal report was submitted on 13 June. In summary, the report leads to my conclusion that there is sufficient evidence of fraud, that absent any security factors indictable offenses have been committed, and that there would be a good chance of successful prosecution.

a. The two principal figures in this connection are Harry W. Robertson and Michael F. Maguire, although the evidence is somewhat stronger in the case of Robertson.

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Robert Alvin Bolke would also be included, but since he would not submit to interrogation, it could well be that he could put up a strong defense on the grounds that he was ordered to sign time cards on pain of termination if he refused. There are lesser figures who improperly signed time cards, but the cases against them are not nearly as clear.

b. There was established no evidence that persons higher than Maguire and Robertson were involved. Further, it appeared unlikely that additional investigation would develop any such evidence. There was no evidence established that Paul Jones was involved, and his firing was attributed to the fact that he had responsibility as comptroller of the division to assure that there was proper charging of hours worked and material used against the Government contracts.

3. Previously, the DCAA Audit Report of 4 April 1973 and, subsequently, the Office of Special Investigations Report of Investigation were made available to Mr. John L. McCullough, Fraud Section, Criminal Division, Department of Justice, and Mr. Raymond E. Hopkins, Civil Division, Department of Justice. Agency representatives met with these gentlemen on two occasions.

a. It was Mr. McCullough's view that, absent security considerations, the evidence established an apparent case of fraud, which after supplemental investigation could result in indictable offenses with probable successful prosecution against Robertson and Maguire. It was indicated, however, that a probable line of defense would be to assert that the work being done under the Letterpress project was related to and beneficial to the Government contracts. Such an assertion would accompany a request for putting the contract before the court.

b. Further, no doubt the defense would want to put on as witnesses the Contracting Officer and probably other technical experts to testify to the actual work being pursued under the contract, as well as the work done in the Letterpress project and relationships between the Government

work and Letterpress. Also, the defense would probably push for identification of the Contracting Officer's employer, i. e., the specific agency involved, not merely the U. S. Government. We did not exhaust all of the potential matters which the defense might attempt to bring into court which would cause us problems from a classification standpoint since it would appear that the matters specified above would not be permitted by the Agency to be brought into open court.

4. It would seem important that the matter of Maguire's security clearance be carefully considered. It is my understanding that as President of Radiation, Inc., a major subcontractor to P-E, he requires not only Top Secret clearance but also the other special clearances he had while with P-E. While it is true he has not been convicted of a crime against the Government, it is clear that his culpability has been established in defrauding the Government.

5. We have examined in considerable depth the civil fraud penalties under 31 U.S.C. 231, which provides for a penalty of \$2,000.00 per false voucher and additional damages payable in twice the amount of the vouchers. Mr. Hopkins indicated that, since discovery rules in a civil suit are somewhat more flexible, he was of the opinion that if we were unable to go forward with a criminal prosecution for security reasons, probably we would not be able to go forward under the civil fraud statute. Nevertheless, there is a remote possibility, if the company were completely cooperative and were to stipulate on a number of factual areas, that a civil suit could be brought. On the other hand, it appears almost certain that P-E would want to bring in Maguire and Robertson as witnesses, and it is not at all possible to predict how they would react in this situation. However, it is more likely that P-E would not be cooperative to the extent of conceding that some of its principal officers had been involved in a fraud action. On balance, therefore, we believe that there are serious security risks attached to bringing a civil suit for damages and forfeiture.

6. Mr. Hopkins also indicated it is the practice of the Department of Justice, where partial restitution has been made by the contractor and accepted by the Government, that those amounts would not be considered in assessing any statutory damages either of the

\$2,000.00 per voucher or the damages in an amount double that of the amount of each voucher. Mr. Hopkins indicated that if we were unable to carry the civil case to court, the Department of Justice would not wish to participate actively in any negotiations for restitution under the contract terms.

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management, however, was aware of the mischarging and charged Maguire, Robertson, and Paul Jones with preventing further mischarging. But, top management, meaning Chester W. Nimitz, Jr. and Robert H. Sorensen, did not assure themselves that the situation has been cleaned up since there were continued mischarges after their admonitions.

9. The Department of Justice has advised that it cannot authorize this Agency to conduct negotiations with P-E with regard to the civil fraud forfeitures and damages.

a. Under its procedures, the Department of Justice would normally require an Assistant Attorney General, Civil Division, to authorize filing of suit and then, before

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actual filing, negotiations would be entered into by Justice with the company, seeking a settlement of the fraud penalties and damages.

b. Having in mind that it is very likely we could not permit court action either criminally or civilly, the question was posed as to whether Justice could alter its normal procedure and proceed to negotiation. We were advised that this would require a specific written request to the Assistant Attorney General, Civil Division. If this were approved, Mr. Hopkins indicated that Justice would be happy to have representatives of the Agency participate in this type of negotiation as part of the team headed by an appropriate Justice representative. If we do not wish to proceed this way, we would be left in the position of effecting appropriate adjustments under the contract, which would call for P-E crediting the Government with [] which takes into account the [] which P-E has already credited to the Government.

10. There are three principal options available with regard to civil fraud penalties:



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12. From the above, it would appear that the following determinations are required:

a. Do security considerations prevent criminal prosecution?

b. Do security considerations prevent civil action in court?

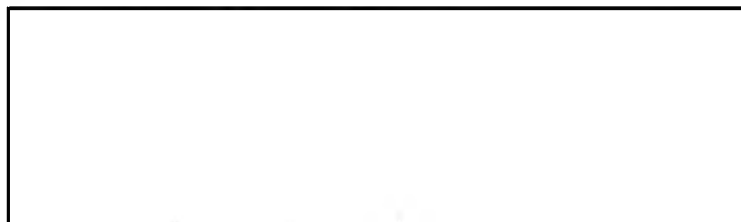
c. Should we request the Department of Justice to negotiate the civil fraud penalties with P-E?

d. If the answer to c. is yes, it will be necessary to request this action in writing. Further, we will need to decide which option in paragraph 10 Justice should pursue and whether interest should be assessed against contract adjustments.

e. If the determination in c. is in the negative, we need to decide who will talk to P-E and in what manner, whether we give it the Audit Report, and in what fashion we apprise it of the results of the OSI investigation. Decisions will need to be made on how we ask P-E to repay the [] (plus an additional estimated \$10,000 developed by OSI).

f. What action, if any, should we take with regard to Maguire's clearance status?

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Acting General Counsel

cc: OLC
C/Detachment A/DCAA
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